

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
China Post Group – United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2014-7

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (WITH CHINA POST GROUP)

(Issued April 4, 2014)

I. INTRODUCTION

On March 14, 2014, the Postal Service filed notices, pursuant to 39 C.F.R. § 3010.40 *et seq.*, seeking approval of a Type 2 rate adjustment affecting the inbound portion of a bilateral agreement with China Post Group (2014 Agreement), and inclusion of the 2014 Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) (Foreign Postal

Operators 1) product.¹ For the reasons discussed below, the Commission approves the requests.

II. BACKGROUND

Product history. The Commission approved the addition of the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, following consideration in Docket Nos. MC2010-35, R2010-5, and R2010-6, and concurrently approved the inclusion of the China Post Agreement (2010 Agreement) and another agreement within the new product.² Since then, the Commission has approved the inclusion of other agreements within the Foreign Postal Operators 1 product, including the successor 2011 and 2013 Agreements with China Post.³ The China Post 2013 Agreement is scheduled to expire April 30, 2014. Notice at 4.

Instant docket. The Postal Service's filing includes the Notice and two attachments: (1) an application for non-public treatment of material filed under seal; and (2) a redacted copy of the 2014 Agreement signed by the Postal Service, and supporting financial workpapers.⁴ *Id.* at 2. The Postal Service states that its intention is to file redacted and unredacted copies of the 2014 Agreement executed by both parties soon. *Id.* at 3, n.3.

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement with China Post Group, March 14, 2014 (collectively, Notice). China Post Group (China Post) is the postal operator for China. *Id.* at 4.

² See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549). The 2010 Agreement was the subject of Docket No. R2010-5.

³ See, respectively, Docket No. R2011-7, Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011; Docket No. R2013-2, Order No. 1598, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with China Post Group), December 28, 2012.

⁴ The full text of the Agreement (signed by the Postal Service) and the supporting financial documentation establishing compliance with 39 U.S.C. § 3622 and 39 C.F.R. § 3010.42 were filed under seal. *Id.* at 3.

Scope. The 2014 Agreement, like the 2010, 2011, and 2013 Agreements, includes delivery confirmation scanning with Letter Post small packets. *Id.* at 4. However, the 2014 Agreement includes two versions of inbound scanning with small packets: (1) China to United States Small Packet with Delivery Scanning Dispatched by China EMS (which is the subject of Annex 2 of the agreement), and (2) China to United States Small Packet with Delivery Scanning Dispatched by China Letter Post (which is the subject of Annex 10 of the agreement). *Id.* The Postal Service states that the inclusion of the two versions acknowledges the roles of, differentiates processing by, and improves settlement procedures in relation to the two entities within China Post that dispatch inbound delivery confirmation scanning with small packets. *Id.* The Postal Service asserts that the rate adjustment results in improvement over default rates established under the Universal Postal Union (UPU) acts for inbound Letter Post items. *Id.* at 1.

Effective date and duration. The 2014 Agreement is intended to take effect May 1, 2014, upon expiration of the 2013 Agreement. *Id.* at 3-4. It is intended to remain in effect until June 30, 2015, unless terminated sooner. *Id.* at 11.

Requests for reporting exceptions. In lieu of the special data collection plan required under 39 C.F.R. § 3010.43, the Postal Service proposes to report information on the 2014 Agreement through the Annual Compliance Report (ACR) and cooperate with the Commission by providing any necessary information about mail flows from China. *Id.* at 8. The Postal Service also asks that the Agreement be excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3), invoking Commission Order No. 996 granting as standing exception for all Foreign Postal Operators 1 agreements.⁵ *Id.*

Initial Commission action. On March 18, 2014, the Commission issued Order No. 2024 providing public notice of the Postal Service's filing; establishing a docket for consideration of the filing's consistency with applicable statutory policies and

⁵ See Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7 (Order No. 996).

Commission regulations; appointing a Public Representative; and providing interested persons with an opportunity to comment.⁶

III. THE POSTAL SERVICE'S POSITION

The Postal Service notes that 39 U.S.C. § 3622(c)(10) entails the Commission's assessment of whether the agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. Notice at 8-9. The Postal Service asserts, with respect to the first criterion, that the rate adjustment results in an improvement over UPU default rates. *Id.* at 1. It also states that improvements in the 2014 Agreement include the parties' agreement to continue the delivery confirmation service for small packets established in the 2010 Agreement; the establishment of revised rates (in Annex 1) for Small Packet with Delivery Scanning for the two versions of inbound scanning with small packets; a revision to Annex 6 including more specific business rules concerning settlement related to Small Packet with Delivery Scanning; and the addition of an Annex 10 concerning China to United States Small Packet with Delivery Scanning Dispatched by China Letter Post. *Id.* at 5-6.

With respect to the second criterion, the Postal Service asserts that the 2014 Agreement will not result in any harm to the marketplace because China Post maintains a generally dominant position in the market for Letter Post originating in its home country, and therefore is the only entity in a position to avail itself of an agreement with the Postal Service of this type and scope. *Id.* at 6. It further states that the United States' Private Express Statutes generally prohibit entities other than the Postal Service from carrying inbound international letters commercially after entry at a U.S. port, at least below certain price and weight thresholds, and it is unaware of any private entity

⁶ Notice and Order Concerning Type 2 Rate Adjustment and China Post 2014 Negotiated Service Agreement, March 18, 2014 (Order No. 2024).

that would be able to serve the United States market for inbound Letter Post from China on the terms and scale contemplated in the 2014 Agreement. *Id.* Finally, the Postal Service notes that both parties to the 2014 Agreement serve as their respective countries' designated operators for the exchange of mail, including in particular Letter Post, under rules set by the UPU. *Id.* It observes that designated operators ordinarily compensate one another for the delivery of Letter Post in accordance with terminal dues rates set by the UPU, unless a bilateral agreement is concluded. *Id.* at 6-7. The Postal Service maintains that because no other entities are in a position to serve as designated operators for the relevant types of mail either originating in China or destined for the United States, and because no other entities are subject to terminal dues rates with respect to inbound Letter Post to the United States from China, the market for the services offered under the 2014 Agreement is in essence limited to its parties. *Id.* at 7. The Postal Service concludes that because there is no significant competition in the relevant market when the inbound Letter Post flows are considered in totality, the 2014 Agreement is unlikely to pose competitive harm. *Id.*

With respect to the third criterion, the Postal Service asserts that there are no entities that are similarly situated to China Post in their ability to tender the Letter Post flows from China that are the subject of the inbound market dominant rates in the 2014 Agreement under similar operating conditions, nor are there any other entities that serve as a designated operator for Letter Post originating in China, and therefore views this criterion inapplicable in this instance. *Id.* at 9.

Functional equivalence. The Postal Service posits that the 2014 Agreement is functionally equivalent to the agreements previously filed and included in the Foreign Postal Operators 1 product because it is very similar to the predecessor 2013 Agreement. *Id.* at 10. It notes that the Commission included the 2013 Agreement in the Foreign Postal Operators 1 product because it met all of the applicable statutory and regulatory requirements. *Id.* The Postal Service asserts that as with the predecessor agreement, the 2014 Agreement fits within the Mail Classification Language for the Foreign Postal Operators 1 product, and therefore the 2014 Agreement and its

predecessor agreement conform to a common description. *Id.* It also asserts that the agreements share a common market and similar financial models, and therefore submits that the 2014 Agreement is functionally equivalent to its predecessor, which the Postal Service maintains is a logical baseline agreement to use for purposes of the functional equivalence comparison. *Id.*

The Postal Service acknowledges differences between the 2014 Agreement and its predecessor, and identifies changes affecting Articles 14, 16, 22, and 23 and Annexes 1, 2, 5, and 6, and the addition of new Article 10. *Id.* at 11-12. The Postal Service asserts that these differences do not affect the similarity of market characteristics or similarity of cost characteristics of the 2014 Agreement and its predecessor, and therefore concludes that the specified differences do not detract from the conclusion that the 2014 Agreement is functionally equivalent to its predecessor agreement in the Foreign Postal Operators 1 product. *Id.* at 12.

IV. COMMENTS

The Public Representative filed comments pursuant to Order No. 2024.⁷ No other comments were received.

Statutory criteria. With respect to criterion 1, the Public Representative's review of the proposed 2014 Agreement rates with the otherwise applicable UPU rates leads her to conclude that the negotiated rates in the Agreement will improve the net financial position of the Postal Service. PR Comments at 3. With respect to criterion 2, the Public Representative states that there are no other entities in a position to serve as designated operators for the relevant types of mail originating in China and destinating in the United States. *Id.* Therefore, she concludes it is unlikely there is a "similarly situated mailer" for purposes of offering a similar agreement. *Id.* The Public

⁷ Public Representative Comments on Postal Service Notice and Order Concerning Type 2 Rate Adjustment and China Post 2014 Negotiated Service Agreement, March 24, 2014 (PR Comments).

Representative also states that she concurs with the Postal Service's assertion that all the requirements in 39 U.S.C. § 3622(c)(10) are met. *Id.*

Functional equivalence. The Public Representative reviews the Postal Service's assertions about the functional equivalence of the Agreements, observes that the Postal Service identifies several improvements that should enhance the performance of mail processing, transportation, and other related functions, and states that the Postal Service identifies differences between the Agreement and its predecessor. *Id.* at 4. She concludes that the 2014 Agreement is functionally equivalent to the 2013 Agreement. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, and comments filed by the Public Representative.

Statutory criteria. Under 39 U.S.C. § 3622(c)(10), the Commission assesses whether the Agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on reasonable terms to similarly situated mailers. The Commission finds, with respect to the first criterion, that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates.⁸ The Commission also finds that the changes to the 2014 Agreement identified in the Notice are likely to enhance the performance of operational functions. The Commission finds, with respect to the second criterion, that the Agreement will not cause unreasonable harm to the marketplace for the reasons identified by the Postal Service. With respect to the third criterion, the Commission notes that in Order No. 163, it observed that given the Postal Service's narrow

⁸ The Commission finds the Postal Service's presentation of a comparison to UPU default rates acceptable for purposes of this docket.

characterization of the agreement under consideration in that case, the Postal Service's position on the inapplicability of this consideration to the facts was correct, and it would be largely an academic exercise to consider whether a broader characterization should be employed.⁹ The Commission reaches the same conclusion on the facts of this case.

Functional equivalence. The Commission has considered whether the 2014 Agreement is functionally equivalent to the baseline agreement. It also has considered the fact that the term of the 2014 Agreement is slightly longer than the baseline agreement, as indicated by the intended termination date of June 30, 2015. The Commission finds that these differences do not foreclose a finding that the agreements are functionally equivalent, and therefore concludes that the 2014 Agreement may be included within the Foreign Postal Operators 1 product, subject to the Postal Service's submission of redacted and unredacted copies of the 2014 Agreement signed by both contracting parties.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of section 3010.43's data collection reporting requirements. Notice at 8. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from China Post within the course of the ACR review process. *Id.* Given the limited nature of this negotiated service agreement with a foreign postal operator, the Commission grants the waiver of section 3010.43. The Commission also approves the Postal Service's invocation of Order No. 996 in support of an exception from separate service performance reporting under 39 C.F.R. § 3055(a)(3) on the basis that the standing exception in Order No. 996 continues to apply.

Follow up submissions. The Postal Service shall promptly file redacted and unredacted copies of the 2014 Agreement signed by both contracting parties. The Postal Service shall notify the Commission if the effective date of the 2014 Agreement differs from the intended effective date. The Postal Service shall also promptly notify

⁹ See Docket Nos. MC2009-7 and R2009-1, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, December 31, 2008, at 9-10 (Order No. 163).

the Commission if the Agreement terminates earlier than intended. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Type 2 rate adjustment requested in this docket, subject to the Postal Service's submission of redacted and unredacted copies of the 2014 Agreement signed by both contracting parties.
2. The 2014 Agreement filed in Docket No. R2014-7 is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35) product, as reflected in the attachment to this Order, subject to the Postal Service's submission of redacted and unredacted copies of the 2014 Agreement signed by both contracting parties.
3. The Postal Service shall notify the Commission if the effective date of the 2014 Agreement differs from the intended effective date.
4. The Postal Service shall promptly notify the Commission if the 2014 Agreement terminates early.
5. Within 30 days of expiration, or early termination, of the 2014 Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

6. The Commission grants the Postal Service's request for an exception to the requirement in 39 C.F.R. § 3010.43 that it prepare a separate data collection plan for the 2014 Agreement, subject to alternative reporting in the ACR and cooperation in filing pertinent information with the Commission.
7. The Commission grants the Postal Service's request for an exception from the separate service reporting requirements in 39 C.F.R. § 3055(a)(3) on the basis of the standing exception granted in Order No. 996.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule (MCS). The Commission uses two main conventions when making changes to the MCS. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products

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1602.3 Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators

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1602.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1
Baseline Reference
Docket Nos. MC2010-35, R2010-5 and R2010-6
PRC Order No. 549, September 30, 2010
Included Agreements

China Post Agreement, ~~R2013-2~~ R2014-7, expires ~~April 30, 2014~~
June 30, 2015

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